

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

telephone [REDACTED]
email owen.boswarva@gmail.com

30 October 2022

The Information Commissioner's Office (ICO)

By email to casework@ico.org.uk

DLUHC reference: 18881014

**Concern about accessing or re-using information from a public body –
FOI request to the Department for Levelling Up, Housing and Communities for information
related to the outcome of a 2016 consultation, 'Strengthening local government
transparency'**

Dear ICO,

I would like to report a concern about the Department for Levelling Up, Housing and Communities's handling of an access to information request. A copy of my email correspondence with DLUHC, including the internal review response, is enclosed in a separate zip file.

Background

In 2016, DLUHC (then called the Department for Communities and Local Government) carried out a public consultation, 'Strengthening local government transparency', on proposed changes to the Local Government Transparency Code 2015. The scope of the consultation was given as follows:

"The Department for Communities and Local Government is consulting on proposals to update the Local Government Transparency Code 2015, in particular to change the way that local authorities record details of their land and property assets, and publish information about their procurement, their contracts and the delivery of some of their services. We are also proposing to include in the Code new requirements about information on parking charges and enforcement and about the way transparency data is published and presented. Finally, we are proposing to include in the Code

recommendations that local authorities publish information about their dealings with small and medium-sized enterprises.”

The consultation document is available on a GOV.UK webpage at the link below:

<https://www.gov.uk/government/consultations/strengthening-local-government-transparency>

Since the consultation closed in July 2016, the webpage has displayed a statement indicating that the Government is analysing the public feedback to the consultation and that the outcome will be available soon. However, given the passage of time, I am doubtful that the Government intends to publish an outcome to the consultation.

In April 2012, I sent DLUHC a request for a copy of all submissions to the consultation. DLUHC did not respond to my request. I complained to the ICO in May 2022 (your reference IC-172287-Q7B6). The ICO contacted DLUHC, and DLUHC responded to my request in June 2022 (their reference 18441214).

DLUHC refused my information request, relying on the exemption in section 14(1) of the FOI Act, on the basis that my request was “vexatious” because it covered “a large volume of information which the Department would need to go through carefully in order to identify issues which might engage FOIA exemptions and apply any necessary redactions.”

I have provided a copy of that correspondence in the enclosed zip file, as background information. However, I am not contesting DLUHC’s response to that request. My complaint in this case relates to a follow-up request that I sent to DLUHC for more specific information about the outcome of the 2016 consultation.

The information request

On 26 June 2022, following from previous correspondence, I sent a new information request to DLUHC as follows:

“Please provide the following information:

1. The number of responses received to the consultation.
2. A list of organisations that submitted responses to the consultation.
3. A copy of any response received from the Cabinet Office.

“Please also provide, if held:

4. Any breakdown or analysis of responses to the questions in the consultation.
5. The most recent unpublished version or draft of any consultation outcome or Government response to the consultation.
6. Any correspondence, meeting minutes, or other record that relates to the decision not to publish the outcome of the consultation.”

DLUHC response

DLUHC responded to my information request on 23 August 2022. DLUHC provided a complete response to points 1 and 2 in my request, and confirmed it did not hold information for point 3.

With respect to points 4-6 in my request, DLUHC confirmed that it holds relevant information but had decided the information was exempt from disclosure:

“We can confirm that this information is held by the Department for Levelling Up, Housing and Communities, however this information is exempt from disclosure under section 35(1)(a) of the FOI Act as it relates to the development of government policy. Information falling within this exemption must still be provided unless it is not in the public interest to do so.

“There will always be some general public interest in the disclosure of internal government information in order to promote transparency and accountability of public authorities. The Department recognises that this allows for the scrutiny of government policy and decision-making processes.

“However, regarding the exemption at section 35(1)(a), the Department must also consider the public interest which lies in maintaining a ‘safe space’ in which officials and Ministers are able to reach policy decisions away from external interference and distraction. Disclosure of this internal information would unacceptably erode into the aforementioned ‘safe space’ and is liable to cause a ‘chilling effect’ on general policy making. This ‘chilling effect’ relates to the notion where under the impediment of distraction, policy officials and Ministers may feel less able to participate in free, frank, and objective discussions regarding any information and advice put before them. We have therefore decided that, on balance, it is not in the public interest to disclose this information at this time.

“In addition, some of this information contains personal data. This information is exempt from disclosure under section 40(2) of the FOI Act as it is personal, about another individual and, as that person could not reasonably expect that his or her personal information would be disclosed, doing so would breach UK data protection legislation.”

Internal review request and response

On 26 August 2022, I requested an internal review of DLUHC's response to points 4-6 of my request. I sent reminders to DLUHC on 9 October and 15 October 2022.

DLUHC responded to my internal review request on 18 October 2022. The review officer confirmed DLUHC's decision to withhold the information, without making any new arguments. The conclusion of the internal review was as follows:

“Having reviewed this case I have concluded that the Department responded to your request correctly. The requested information was correctly withheld under the

exemptions listed and the public interest is weighted in favour of continuing to withhold the information.”

Points of concern

Following are my reasons for complaining about DLUHC’s response to my information request. These reasons are substantially the same as the arguments made to DLUHC when I requested the internal review.

I do not think DLUHC's application of the exemption in section 35(1)(a) of the FOI Act is correct.

I have inferred that DLUHC holds information in scope of each of points 4-6 in my information request. My working assumption is that all or most of that information will have been produced shortly after the end of the consultation period in 2016, and will now be at least five years old.

I also assume that the Government does not intend to publish an outcome and response to the consultation, given that more than six years has passed since the consultation closed.

There have now been two general elections and several changes of Government since the consultation closed. I doubt there is any live policy process to protect.

There have been no signs that the Government intends to revive the proposals in the consultation, or to further develop the Local Government Transparency Code. Were the Government to do so, I think it is unlikely that the formulation and development of policy in this area would rely significantly on analysis of responses to the 2016 consultation, or on other information within scope of my information request.

Given the timing of my request, it is implausible that release of the information I have requested has any significant potential to damage policymaking. I cannot see that the public interest in maintaining the section 35(1)(a) exemption outweighs the public interest in disclosure.

Thank you for your attention to these concerns.

Yours faithfully,

Owen Boswarva